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Ulrich Stauss

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EXAMINER

GARCIA, ERNESTO

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/566,885	<b>Applicant(s)</b> STAUSS, ULRICH	
	<b>Examiner</b> Ernesto Garcia	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) 28,29 and 31-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-27,30 and 38-44 is/are rejected.
- 7) ☒ Claim(s) 43 and 44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/1/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election of Species***

Applicant's election with traverse of Group I and species I, claims 23-30 and 32-44, in the reply filed on September 11, 2007 is acknowledged. The traversal is on the ground(s) that examination of all the claims would not present an undue burden because the claims have been amended to only recite the device and the species are related so as to be examinable together. This is not found persuasive with respect to the species election requirement. Applicant alleges that Figures 4 and 5 "merely illustrate variations of the elements shown in Figures 1-3". Is this an admission that the variations are not patentably distinct? If so, then such should be clearly stated on the record. Applicant alleges that the screw of species II is utilized in the exact same way as the screw of species I. This is of little consequence since it is the structure of the respective screws that define the respective species, not how they are used. Accordingly, the screws are not the same in design as previously noted.

The requirement is still deemed proper and is therefore made FINAL.

Claims 28, 29, and 31-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable

generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 11, 2007.

Regarding the withdrawal of claims 32-37, applicant indicates that these claims are readable upon elected species; however, these claims depend from claim 31, which applicant indicated as not being readable upon the elected species, and thus become inherently withdrawn. Note that claim 31 is clearly not readable on the elected species of Figures 1-3. Regarding the withdrawal of claim 28, the elected species does not have the inclined wall surface 32 ending at the head surface (50a) of the screw head (36a). Regarding the withdrawal of claim 29, this claim inherently becomes withdrawn since the claim depends from withdrawn claim 28.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "89" as described on paragraph 0036.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "38" has been used to designate both a stop surface (Figure 2) that is bigger than the stop surface shown in Figure 4; and another stop surface (Figure 4) that is smaller than the stop surface shown in Figure 2.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "40" has been used to designate both an annular section (Figure 2) that is bigger than the annular section shown in Figure 4, and another annular section (Figures 4 and 5) that is smaller than the annular section shown in Figure 2.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "42" has been used to designate both a conically tapering wall section (Figure 2) that is bigger than the conically tapering wall section shown in Figure 4, and another conically tapering wall section (Figures 4 and 5) that is smaller than the conically tapering wall section shown in Figure 2.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "43" has been used to designate both an notches (Figure 2) that are bigger than the notches shown in Figure 4, and other notches (Figures 4 and 5) that are smaller than the notches shown in Figure 2.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "44" has been used to designate both an ribs (Figure 2) that are bigger than the ribs shown in Figure 4, and other ribs (Figures 4 and 5) that are smaller than the ribs shown in Figure 2.

The drawings are objected to because the lead lines of the notches 43 in Figure 4 appear to point to the ribs instead. Further, reference character 44 is missing a lead line in Figure 4. Black shading of the protective plate 60 is not permitted and should be deleted. See MPEP 37 CFR 1.84(m).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended". If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities:

the reference to "the preamble of the independent claim" in paragraph 001 is improper since independent claim 23 has no preamble. Note, the specification is not a living document and the scope of "independent claim" is likely to change during the course of prosecution. Accordingly, the "features" being referred to must be specifically identified. Appropriate correction is required.

### ***Claim Objections***

Claims 23, 27, and 43 are objected to because of the following informalities:

regarding claim 23, "its" in line 2 should be defined, "an" in line 6 should be --the-- the two hollow profiles should be identified by "first" and "second" to distinguish between the two profiles, "them" in line 9 should also be defined;

regarding claim 27, "the latter" in line 2 should be defined; and,

regarding claim 43, "the latter" in line 3 should be defined and --the-- should be inserted before "lateral" in line 4. Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 38-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 23, the recitation "a profile channel (14) parallel to its profile longitudinal axis (A)" in lines 2-3 is misdescriptive and/or inaccurate since the channel 4 actually is concentric to the longitudinal axis A and not parallel to axis A. Note that the longitudinal groove 22 is parallel to the axis A. The recitations "the shaft", in line 5, and "the screw head", in line 6, lack proper antecedent basis. Note that all screws do not inherently have a screw head.

Regarding claim 38, the recitation "a hollow profile" in line 3 makes unclear whether this is another hollow profile than those recited in claim 23, line 1, or one of those hollow profiles recited in claim 23, line 1.

Regarding claim 41, the broad range "20° to 40°" together with a narrow range "25°" that falls within the broad range in the same claim is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent



Art Unit: 3679

protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949).

Regarding claim 43, the recitation "the protective surface as a protective plate" in lines 1-2 lacks connection with the remainder of the claim. Note that a surface cannot be compared to a plate since the plate encompasses the surface.

Regarding claims 39-40 and 44, the claims depend from claim 38 and therefore are indefinite.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3679

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Muller, DE-20,106,561.

Regarding claim 23, Muller discloses, in Figures 1, 5, and 8, a device comprising two hollow profiles **1,2** and a connecting screw **3**. The profiles **1,2** are arranged approximately at right angles to one another. Each of the profiles **1,2** has a profile channel **21** parallel to a longitudinal axis of the profiles **1,2** and at least one profile side surface having an undercut longitudinal groove **10** parallel to the profile channel **21**. The connecting screw **3** holds the profiles **1,2** together. A shaft **30** of the screw **3** engages in the profile channel **21** of one of the profiles **1,2** and a screw head **32** of the screw **3** is mounted in the undercut longitudinal groove **10** of the other hollow profile. The screw head **32** is provided on a periphery with grooves or notches running in planes extending from the longitudinal axis of the shaft **30** and forming ribs **310** between the grooves or notches.

Regarding claim 30, the shaft **30** of the connecting screw **3** is provided with a cutting thread (note that all threads are cutting threads).

Regarding claim 38, the screw head **32** is arranged in a groove space of the one of the hollow profiles. An insertion head **61** of a tool **6** is integrated, which is integrally

Art Unit: 3679

formed at one end in a round profile. The insertions head **61** has longitudinal notches **60** in its peripheral surface.

Regarding claim 39, the diameter of the round profile of the tool 6 is shorter than a depth of the groove space of the hollow profile.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-27 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller, DE-20,106,561, in view of Langer, 4,685,848.

Regarding claim 24, Muller, as discussed, fails to disclose the screw head tapering conically towards a head surface remote from the shaft. A wall surface, which is inclined at an angle with respect to the longitudinal axis of the shaft, is provided with the grooves or notches and ribs **310**. Langer teaches, in Figures 8-9B, a screw head tapering conically 174 towards a head surface remote from the shaft to be able to use a tool at an angle to rotate a screw (see Figure 9A). Therefore, as taught by Langer, it

Art Unit: 3679

would have been obvious to one of ordinary skill in the art at the time the invention was made to make the screw head tapering conically towards a head surface remote from the shaft to provide ribs and grooves to be able to use the tool at an angle greater than what is allowed in Muller.

Regarding claim 25, given the modification, the angle will be approximately 45 degrees.

Regarding claim 26, Muller, as modified, fails to disclose the screw head having, between a shaft-facing connection surface and the inclined wall surface, an annular section of constant diameter in which the shaft-facing ends of the notches and the ribs form a crenellated edge pattern. Langer teaches, in Figures 8-9B, a screw head having between a shaft-facing connection surface and an inclined wall surface, an annular section of constant diameter (Figure 9B) in which the shaft-facing ends of the notches and the ribs form a crenellated edge pattern. Langer does not mention any particular purpose for the annular section of constant diameter; however, it would appear that one skilled in the art, at the time the invention was made, can simply replace the screw head of Muller with that of Langer since either screw head will turn the screw to fasten the profiles together. Therefore, as taught by Langer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the screw head containing the annular section of constant diameter with that of Muller since the screw head will function equally to turn the screw.

Regarding claim 27, given the modification of claim 24, the inclined wall surface will end at a radial step surface (between 310 and 32 in Figure 9 of Muller; note that in Figure 9 of Muller, portion 310 becomes conical with the teeth). The radial step surface surrounds in an annular manner an integrally formed top body 32 of the screw head. The top body has 32 has a head surface (the end surface).

Regarding claim 40, Muller, as discussed, fails to disclose the peripheral surface of the insertion head tapering conically. Langer teaches, in Figures 8-9B, a peripheral surface of an insertion head tapering conically to rotate a screw with tapering teeth. Therefore, as taught by Langer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the tool of Muller with that of Langer since either tool will turn the screw of Muller.

Regarding claim 41, given the modification, the angle between an axis of the round profile and the peripheral outer surface of the insertion head is approximately 20 to 40 degrees.

Regarding claim 42, Muller, as discussed, fails to disclose a protective section of a protective surface bears against the peripheral or outer surface of the insertion head and the protective surface being releasably fixed to the round profile. Langer teaches, in Figure 9A, a protective section of a protective surface bears against the peripheral or

Art Unit: 3679

outer surface of a insertion head 190, and the protective surface being releasably fixed to the round profile to provide a fulcrum to the tool to be rotated (col. 8, lines 24-26).

Therefore, as taught by Langer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a protective surface bearing against the peripheral or outer surface of the insertion head and the protective surface being releasably fixed to the round profile to provide a fulcrum to the tool to be rotated.

***Allowable Subject Matter***

Claim 43 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 44 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 43, as best understood, the prior art of record does not disclose or suggest the protective section comprising a protective plate having a lateral section which bent out from the surface of a holding section on which the lateral section the protective section is integrally formed in an inclined manner; and,

Art Unit: 3679

regarding claim 44, this claim depends from claim 44.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30AM-6:00PM. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*E.G.*

E.G.

October 1, 2007



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